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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,406	11/01/2001	Michael Aita	9688-1000	1008

7590

07/02/2003

COUDERT BROTHERS LLP  
3rd Floor  
600 Beach Street  
San Francisco, CA 94109-1312

EXAMINER
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KENNEDY, SHARON E

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 07/02/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
10/002,406

Applicant(s)  
Aita et al

Examiner  
Sharon Kennedy

Art Unit  
3762



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-8, and 10-17 is/are rejected.
- 7) ☒ Claim(s) 2 and 9 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action or the MPEP.

#### ***Drawings***

2. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on March 22, 2003 have been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

3. Since allowable subject matter has been indicated, applicant is encouraged to submit formal drawings in response to this Office Action. The early submission of formal drawings will permit the Office to review the drawings for acceptability and to resolve any informalities remaining therein before the application is passed to issue. This will avoid possible delays in the issue process.

#### ***Claim Rejections - 35 USC § 102***

4. Claim 16 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lary et al, US 5,713,913. Claim 16 does not require that the radiopaque layer be in the interior of the balloon. Lary discloses at least two radiopaque layers, 36, 38 affixed to the exterior.

***Claim Rejections - 35 USC § 103***

5. Claims 1, 3-8, 10-15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lary '913. It would be obvious to one of ordinary skill in the art to affix the Lary radiopaque regions to the interior of the balloon instead of the exterior because it is well established that the reversal or rearrangement of part is obvious. See MPEP 2144.04 VI., entitled, *Reversal, Duplication, or Rearrangement of Parts*, and the case law cited therein. Regarding claims directed to the dimensions of the balloon, it is an obvious design choice to make the balloon at any thickness dependent upon the patient need.

***Allowable Subject Matter***

6. Claims 2 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claim. The prior art does not teach or fairly suggest the radiopaque regions facilitating the folding of the balloon as set forth in claim 2, or the radiopaque layer disposed in the interior and between two layers as set forth in claim 9.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon Kennedy whose telephone number is (703) 305-0154.

June 26, 2003

  
Sharon Kennedy  
Primary Examiner